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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

MAY 19 2004

FILE: SRC 03 229 52196 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(iii)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a flight training school that seeks to employ the beneficiary as a flight instructor trainee. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker trainee pursuant to section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(iii). The director denied the petition on the basis that the beneficiary filed the wrong form.

Counsel submitted a timely Form I-290B on February 18, 2004 and indicated that he was not submitting a brief or additional evidence. Therefore, the record is complete.

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v).

On the Form I-290B, counsel fails to specify how the director made any erroneous conclusion of law or statement of fact in denying the petition. As neither the petitioner nor counsel presents additional evidence on appeal to overcome the decision of the director, the appeal will be summarily dismissed in accordance with 8 C.F.R. § 103.3(a)(1)(v).

The AAO notes that the petitioner is considered a vocational school. The petitioner provides instruction in a school-like setting in preparation for a specific career, without providing a degree. Because the petitioner is a vocational institution, the beneficiary is not eligible for H-3 classification. The regulations state, "An H-3 classification applies to an alien who is coming temporarily to the United States: (1) As a trainee, other than to receive graduate medical education or training, *or training provided primarily at or by an academic or vocational* institution." 8 C.F.R. § 214.2(h)(1)(ii)(E)(*1*) (Emphasis added). The petitioner should have filed a petition to classify the beneficiary as a vocational student in the M-1 category.

The burden of proof in this proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.